
CCL 24/05/2022 – NSW LAND AND HOUSING CORPORATION - FUNDING DEED

ITEM-41 Attachment A: Funding Deed (also includes the MoU)

DISTRIBUTED UNDER SEPARATE COVER



Funding Deed

Department

Department of Planning and Environment

Agency/Division

Land and Housing Corporation



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Details

Grantee ('LAHC')	Name	New South Wales Land and Housing Corporation
	Address	4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
	ABN	24 960 729 253
LAHC Authorised Officer <i>(refer to clause 16 – Notices)</i>	Name	Deborah Brill
	Position	A/Chief Executive
	Address	4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
	Telephone	0476 834 580
	E-mail	Deborah.Brill@facns.nsw.gov.au
Grantor	Name	Newcastle City Council
	Address	12 Stewart Avenue, Newcastle West NSW 2302
	ABN	25 242 068 129
Grantor's Authorised Officer <i>(refer to clause 16 - Notices)</i>	Name	David Clarke
	Position	Director of Governance & Chief Financial Officer
	Address	12 Stewart Avenue, Newcastle West NSW 2302
	Telephone	0477 380 839
	E-mail	dclarke@ncc.nsw.gov.au
Project	Expedited development by LAHC of a net increase in social and affordable housing in the Newcastle LGA. The Project must be in accordance with the MoU and a list of projects to be delivered by LAHC that fall within the scope of the MoU and this Deed will be mutually determined by the Parties annually.	
Grant <i>(refer to clause 5 – Grant)</i>	The value of approximately \$5,005,326 over the period of three (3) Financial Years.	
Commencement Date <i>(refer to clause 2.1 – Commencement)</i>	Upon execution of this Deed.	

Terms

Definitions and Commencement

Definitions and Interpretation

1. Interpretation

1.1 Unless the context requires otherwise, in this Deed:

- (a) the terms set out in the left-hand column of the Details have the meaning ascribed to them in the right-hand column of the Details;
- (b) where any time limit pursuant to this Deed falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;
- (c) a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;
- (d) the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
- (e) references to persons include bodies corporate, government agencies and vice versa;
- (f) references to the Parties include references to respective directors, officers, employees and agents of the Parties;
- (g) nothing in this Deed is to be interpreted against a Party solely on the ground that the Party put forward this Deed or any part of it; and
- (h) where an expression is defined, any other grammatical form of that expression has a corresponding meaning.

1.2 Definitions

Annual Report means an annual report to be provided by LAHC to the Grantor on or before the end of each Financial Year during the Life of this Project, which must include those items listed at **clause 7.2**.

Business Day means any day other than a Saturday, Sunday or public holiday in New South Wales.

Claim means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising and includes legal costs on a full indemnity basis.

CN means the Newcastle City Council.

Confidential Information of a Party means all trade secrets, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) which:

- (a) is by its nature confidential;

- (b) has been designated as confidential by a Party;
- (c) is capable of protection at common law or equity as confidential information; or
- (d) is derived or produced partly from the information in paragraphs (a), (b) or (c) above

but does not include information that:

- (e) is in the public domain; or
- (f) is independently known or developed by the Party receiving the information other than as a result of a breach of this Deed or any other obligation of confidentiality owed by or to any other person.

Correctly Rendered Invoice means an invoice containing the following information:

- (a) Business name;
- (b) A unique invoice number;
- (c) Business contact details;
- (d) Australian business number (ABN);
- (e) Date of issue of invoice;
- (f) A brief description of the payment claim;
- (g) The GST amount; and
- (h) Payment terms and details.

Deed means this funding deed document and includes the Details, Terms, Schedule A and any other schedules, annexures or other documents cross-referenced in this deed.

Delivery means all aspects of the performance, oversight and management of the Project that ensures the progression of the Project from commencement to completion.

Financial Year means the period of time from 1 July of any one year to 30 June of the subsequent year.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property or IP includes:

- (a) all rights in relation to copyright, inventions, plant varieties, trademarks, designs, patents; and
- (b) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including trade secrets and know-how,

but does not include Moral Rights.

LAHC means the New South Wales Land and Housing Corporation.

LGA means Local Government Area.

Life of this Project means the period of time envisaged by **clause 2** of this Deed.

MoU means the memorandum of understanding between LAHC and CN dated 3 November 2021, as exhibited at **Schedule A**.

Moral Rights has the same meaning as in the *Copyright Act 1968* (Cth).

Notice means any approvals, consents, instructions, orders, directions, statements, requests and certificates, or other communication one Party gives to another Party in writing under this Deed.

Parties means the Grantee and Grantor as described in the **Details**.

Personal Information has the same meaning as in the *Privacy and Personal Information Protection Act 1998* (NSW).

Project means the definition given to the term in the **Details**.

Project Material means material created as part of or in performance of the Project including any documents or data.

Rates means the annual rates paid by LAHC for their properties in the Newcastle LGA, but does not include:

- a) rates paid by LAHC for properties owned by other entities (including but not limited to the Aboriginal Housing Office);
- b) rates paid by other entities (including but not limited to Community Housing Providers) for properties owned by LAHC; and
- c) the Hunter Catchment Contribution paid by LAHC (which is collected by CN on behalf of the NSW Government).

Steering Committee means the committee established for the purpose of guiding the Project and comprising of members from both LAHC and the Grantor.

2. Term

2.1 This Deed will commence on the Commencement Date.

2.2 Unless terminated earlier, this Deed will end on 30 June 2025.

What LAHC must do

3. The Grantor's obligations

3.1 The Grantor must:

- (a) ensure the Grant is paid in accordance with this Deed;
- (b) engage with LAHC in determining which development of social and affordable housing will be undertaken in pursuance with the Project; and
- (c) comply with all Commonwealth, State and Local government laws that are relevant to the Grantor's obligations in this Deed, or its registration as an entity.

3.2 For the sake of clarity, with the exception of assisting in determining which development is selected for construction in line with this Project, the Grantor is not responsible for the Delivery of the Project in accordance with the terms of this Deed.

4. LAHC's obligations

4.1 LAHC must:

- (a) ensure the Grant is used only for the approved Project and in accordance with the terms of the Grant as described in this Deed;
- (b) engage with the Grantor in determining which development of social and affordable housing will be undertaken in pursuance with the Project;
- (c) comply with the requirement to provide to the Grantor a Correctly Rendered Invoice and an Annual Report in accordance with this Deed; and
- (d) comply with all Commonwealth, State and Local government laws that are relevant to the Project, this Deed, or its registration as an entity.

4.2 For the sake of clarity, LAHC is responsible for undertaking and the Delivery of the Project in accordance with the MoU and this Deed.

About the Grant

5. The Grant

5.1 The Parties agree that:

- (a) the Grantor will provide the Grant to LAHC in three tranches reflective of the Life of this Project being across three Financial Years;
- (b) the value of the Grant noted in the **Details** is a cumulative estimate across the Life of this Project based on the current level of Rates paid by LAHC in the 2021/2022 Financial Year, but in no way fixes the amount of the Grant to be paid by the Grantor under this Deed; and
- (c) the value of each tranche of the Grant will be calculated based on Rates which CN is entitled to be paid by LAHC for the relevant Financial Year.

5.2 In accordance with **clause 5.1**, the Grantor will provide LAHC with three payments:

- (a) The first tranche payment of \$1,668,442 will be paid at the Commencement Date of this Deed and otherwise no later than 30 June 2022, subject to the Grantor's receipt of a Correctly Rendered Invoice from LAHC.
- (b) The second tranche payment will be paid no earlier than 1 July 2023, subject to the Grantor's prior receipt of a Correctly Rendered Invoice and an Annual Report from LAHC.
- (c) The third tranche payment will be paid no earlier than 1 July 2024, subject to the Grantor's prior receipt of a Correctly Rendered Invoice and an Annual Report from LAHC.

5.3 Each tranche payment identified at **clause 5.2** will be paid by the Grantor to LAHC within 28 calendar days from the provision of a Correctly Rendered Invoice and an Annual Report (in respect of the second and third tranche payments) from LAHC to the Grantor.

5.4 The Grant must only be used for the approved Project to expedite development by LAHC of a net increase in social and affordable housing in the Newcastle LGA.

- 5.5 The Grant must not be used by LAHC to fund its own administrative or overhead costs or to fund existing LAHC projects in the Newcastle LGA. The Grant is not to be expended on projects outside the Newcastle LGA.
- 5.6 LAHC is to contribute its own funds towards Delivering the Project which must at least match the value of the Grant provided by the Grantor.
- 5.7 With prior written agreement between the Parties, a portion of the Grant (no greater than 20% in any one Financial Year) may be retained by the Grantor to fund any direct, additional, and specific costs associated with the Grantor providing services in support of the Project.

6. GST

- 6.1 GST may be payable in respect of supplies made under this Deed.
- 6.2 LAHC must be registered under the GST Law at the time of making any supply under this Deed on which GST is imposed.
- 6.3 If LAHC is not registered under the GST Law as required under **clause 6.2**, LAHC will not be entitled to receive any additional amount as provided under this **clause 6**.

Material and Information

7. Reporting Requirements

- 7.1 LAHC agrees to provide the Grantor with an Annual Report in accordance with **clause 5.2** and at the end of the Life of this Project.
- 7.2 Each Annual Report must:
 - (a) demonstrate that the Grant has been used by LAHC in accordance with the Deed;
 - (b) outline and describe the Projects undertaken, including their status, as part of the Project;
 - (c) detail the quantum and breakdown of expenditure of the Grant and LAHC's contribution towards the Project (based on the financial accounts and records required to be kept by LAHC in accordance with **clause 7.5**); and
 - (d) detail the quantum and breakdown of the net increase in social and affordable housing in the Newcastle LGA achieved as a result of the Grant and the Project.
- 7.3 LAHC must also provide any other information the Grantor or the Steering Committee reasonably requires from time to time concerning the Project.
- 7.4 If any Annual Report contains Confidential Information to LAHC, LAHC is to mark the relevant parts of the Annual Report accordingly.
- 7.5 LAHC must keep financial accounts and records relating to the Project so as to enable:
 - (a) all receipts and payments related to the Project to be identified in LAHC's accounts and reported in accordance with this Deed;
 - (b) unless notified by the Grantor, the preparation of financial statements in accordance with Australian Accounting Standards; and

- (c) generation of an income and expenditure statement for each Financial Year of the Project.

8. Intellectual Property

- 8.1 Intellectual Property in all Project Material remains the property of the respective Parties.

9. Confidential Information

- 9.1 Each Party must maintain the confidentiality of all Confidential information it receives from the other Party, except in accordance with **clause 11** (Public Announcements) or as otherwise agreed in writing.

10. Privacy

- 10.1 The Grantor will:

- (a) ensure that Personal Information that is provided by the LAHC or collected by the Grantor under or in connection with this Deed is used only for the purposes of this Deed and is protected against loss, unauthorised access, use, modification and disclosure, or against other misuse;
- (b) not disclose any Personal Information without the written consent of:
 - i. the individual to whom the Personal Information relates; or
 - ii. LAHC,
 unless otherwise required or authorised by law; and
- (c) comply with the Information Protection Principles applying to NSW public sector agencies under the *Privacy and Personal Information Protection Act 1998* (NSW) when doing any act or engaging in any practice in relation to Personal Information as if you were an agency directly subject to that Act.

11. Public Announcements and Acknowledgement

- 11.1 The Parties must:

- (a) work together in good faith prior to any public announcement about the Project;
- (b) acknowledge the support of the Grantor and LAHC,
 - i. in any public statements about the Project; and
 - ii. on any communication materials established in connection with the Project; and
- (c) use both the Grantor's and LAHC's logo when acknowledging the support of the Project in compliance with the NSW Government Brand Guidelines and CN's Brand Guidelines.

- 11.2 The Parties may publish the title and brief description, including outcomes, of the Project and the amount of the Grant.

- 11.3 LAHC is responsible for and will lead all media relations, communications, community and stakeholder engagement relating to the Project at its own cost, as per existing

responsibilities. CN, as Grantor, will provide approved quotes for media statements as required and both Parties will follow protocol and brand guidelines as outlined above.

Dealing with Risk

12. Disclosure of Information

12.1 The Grantor and LAHC acknowledge that, under the *Government Information (Public Access) Act 2009* (NSW), either Party may be required to publicly disclose information about this Deed. None of the disclosure obligations require the disclosure of:

- (a) the commercial-in-confidence provisions of a contract;
- (b) any matter that could reasonably be expected to affect public safety or security; or
- (c) information which would be exempt from disclosure if it were the subject of an application under *Government Information (Public Access) Act 2009* (NSW).

12.2 The Grantor and LAHC may nominate any items they consider confidential and why, to assist the other Party in determining what items to disclose.

13. Indemnities

13.1 LAHC must indemnify and keep indemnified the Grantor and its officers, employees and agents from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:

- (a) the use of the Grant or the use of any outcomes from the Project;
- (b) LAHC's breach of this Deed;
- (c) any unlawful or negligent act or omission by LAHC, or its employees or subcontractors in connection with this Deed;
- (d) any illness, injury or death of any person LAHC, or its employees or subcontractors cause or contribute to, in connection with this Deed; or
- (e) any loss or damage to real or personal property LAHC, or its employees or subcontractors cause or contribute to, in connection with this Deed.

13.2 LAHC's liability to indemnify the Grantor under this clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Grantor, its officers, employees or agents contributed to the relevant loss or liability.

13.3 LAHC's liability to indemnify the Grantor under this clause does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Deed.

14. Termination

14.1 Where a Party has breached this Deed:

- (a) the other Party may give a Notice to that Party requiring it to rectify that breach within 30 calendar days of receiving that Notice; and

- (b) if the Party which received the Notice fails to rectify that breach in time, the other Party may terminate this Deed immediately by giving a further Notice.
- 14.2 Either Party may terminate this Deed by Notice, with effect on the date stated in the Notice, if a Party breaches a provision of this Deed in a manner that, in the other Party's reasonable opinion, is not capable of remedy.
- 14.3 The Grantor may terminate this Deed with Notice if LAHC breaches any of the following provisions:
- (a) clause 4 (LAHC's Obligations);
 - (b) clause 7 (Reporting Requirements); or
 - (c) clause 17.11 (Assignment).
- 14.4 LAHC may terminate this Deed with Notice if the Grantor breaches **clause 3** (Grantor's Obligations).
- 14.5 If the Grantor or LAHC terminates this Deed by Notice pursuant to **clauses 14.1, 14.2, 14.3 or 14.4**:
- (a) any obligation of the Grantor to make payments to LAHC pursuant to **clauses 5.1, 5.2 and 5.3** will cease as at the termination date. However, at the sole discretion of the Grantor, despite any termination of this Deed the Grantor may decide to pay part of, or all of, the Grant payable for the Financial Year that the termination occurred; and
 - (b) within 10 business days of the termination date, LAHC must provide the Grantor with an itemised report detailing the amount of the paid Grant used and that amount remaining unused as at the termination date. Following the Grantor's receipt and written approval of this report, LAHC must within 10 business days return any unused amount of the Grant to the Grantor.
- 14.6 This **clause 14** does not exclude or reduce the rights of a Party to terminate the Deed arising by operation of the common law or statute or the other terms of this Deed.

Other Legal Matters

15. Dispute Resolution

- 15.1 If a dispute arises in relation to this Deed ("a Dispute"), a Party must comply with this **clause 15** before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.
- 15.2 A Party claiming that a dispute has arisen must notify the other Party in writing giving details of the dispute (Dispute Notice) in accordance with the requirements of **clause 16** (Notices).
- 15.3 Following receipt of a Dispute Notice, each Party must refer the Dispute to a senior representative, who:
- (a) does not have prior direct involvement in the Dispute; and
 - (b) has authority to negotiate and settle the Dispute.

- 15.4 If the Dispute is not resolved within 10 Business Days, from the date the Dispute Notice is received by the Party to whom the Dispute Notice is given, the Party which gave the Dispute Notice under **clause 15.2** must refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.
- 15.5 If the Dispute is not resolved within 40 Business Days after referral to mediation either Party may initiate proceedings in court.
- 15.6 Each Party must pay its own costs of complying with this clause and split the costs of the mediator evenly.

16. Notices

- 16.1 Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered, posted or emailed to the Authorised Officer specified in the Details or as otherwise notified in writing.
- 16.2 The receiving Party will be deemed to have received the Notice as follows:
- (a) if hand delivered, on the day on which it is delivered or left at the relevant address;
 - (b) if sent by post within Australia:
 - i. if posted using Express Post, the priority letter service option of regular post, or the priority service option for Registered Mail, on the fourth Business Day after the day on which it is posted;
 - ii. if posted using the regular post option, on the tenth Business Day after the day on which it is posted;
 - (c) if sent by email before 5.00pm on a Business Day, the first of the following occurring:
 - i. when the sender receives an automated message confirming delivery; or
 - ii. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not be delivered.
 - (d) if sent by email after 5.00pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
- 16.3 Any such mode of service will be in all respects valid notwithstanding that the Party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.

17. General

17.1 Electronic Execution & Exchange

- (a) The Parties consent to this document and any variations of this document being signed by electronic signature, by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the Parties, and the Parties agree that the document may be signed by or on behalf of any legal entity as set out in this

clause. If this document or any subsequent variations are signed by or on behalf of a corporate or statutory legal entity, the persons signing warrant that they have the authority to sign.

- (c) For the purposes of this clause, the Parties agree that this document or a variation is taken to have been signed by a person if the method used to identify the person and to indicate the person's intention to sign this document is:
- i. For the person themselves to insert an image (including a scanned image) of their own unique signature into an electronic version of the document, along with their name, position and words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*';
 - ii. For the person themselves to use a stylus or finger on a touch screen to sign an electronic version of the document, along with inserting their name, position and words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*';
 - iii. For the person to sign a printed copy of the document themselves in wet ink along with inserting their name, position and words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*' before the document is scanned;
 - iv. For the person to use a reliable electronic signature and exchange platform (such as DocuSign, for example) to sign the document; or
 - v. As otherwise agreed in writing (including via email) between the Parties.
- (d) The Parties agree that the above method is as reliable as appropriate for the purpose of signing this document and that electronic signing of this document by or on behalf of a Party indicates that Party's intention to be bound.
- (e) The Parties agree that, if a witness is required, the signing of this document (whether by wet ink or in accordance with this clause) may be witnessed via audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000 (NSW)*.
- (f) This document may be electronically signed and/or signed in wet ink in any number of counterparts. All counterparts, taken together, constitute one document.
- i. This document is binding on the date the Parties exchange counterparts whether by post, facsimile or email. A copy of a counterpart sent by facsimile machine or emailed:
 - ii. Must be treated as an original counterpart;
 - iii. Is sufficient evidence of the execution of the original; and
 - iv. May be produced in evidence for all purposes in place of the original.
- (g) Where this document and/or any variations of this document are required by law to be in physical form, the Parties agree that a print-out of an electronically signed copy satisfies that requirement.
- (h) To avoid doubt, this clause applies even if this document or any subsequent variations are being executed as a deed.

17.2 **Survival:** The following clauses survive termination or expiry of this Deed: **clause 7** (Reporting Requirements), **clause 9** (Confidential Information), **clause 10** (Privacy), **clause 133** (Indemnities), **clause 14** (Termination), **clause 17.4** (Keeping of records), this **clause 17.2** and any other clause which by its nature is intended to survive this Deed.

17.3 **Subcontractors:** LAHC remains fully responsible for the Delivery of the Project even if LAHC subcontracts the Delivery of any part of the Project.

17.4 **Keeping of records, audit and rights of access to such records:** LAHC:

- (a) must keep complete and accurate records and books of account with respect to LAHC's performance of the Project (the "Records"), and must retain such Records for a minimum of seven (7) years after expiry or termination of this Deed;
- (b) authorise the Grantor (the "Auditors") that has provided moneys to LAHC for the purposes of the Project, to undertake audits, to examine and inspect, at reasonable times and on reasonable Notice, any Records held by LAHC, and allow any such Records to be copied; and
- (c) provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.

17.5 **Conflict of Interest:** LAHC and the Grantor must not carry on or be involved in any capacity in an activity or business, which may conflict with, or adversely affect, either Parties' ability to carry out its obligations under this Deed, and either Party will immediately notify the other Party in writing if such a conflict or risk of such a conflict arises.

17.6 **Entire Deed:** This Deed states all the express terms agreed by the Parties as to the matters referred to in this Deed. It supersedes all prior contracts, obligations, representations, conduct and understandings between the Parties relating to the subject matter of this Deed (excluding the MoU where referred to in this Deed as being relevant to the performance of a Party's obligations).

17.7 **Variation:** This Deed may only be varied by agreement in writing including by an exchange of emails confirming the agreed variation.

17.8 **Inconsistency:** If there is any inconsistency between provisions of this Deed then the order of precedence will be:

- (a) the Details; then
- (b) these Funding Terms; then
- (c) any Schedules.

17.9 **Negation of employment, partnership or agency**

- (a) This Deed does not create a relationship of agency, partnership, and/or employment between the Parties.
- (b) LAHC and the Grantor must not represent itself as being an employee or agent of the other Party or as otherwise able to bind or represent the other Party.

17.10 **Waiver**

- (a) If a Party fails to exercise any of its rights under this Deed, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect estop a Party from relying on the terms of this Deed to their full force and effect.

(b) Any waiver by a Party of a breach of this Deed must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

17.11 **Assignment:** LAHC and the Grantor must not assign or novate its obligations or interests under this Deed, without the prior written consent of the other Party.

17.12 **Counterparts:** This Deed may be signed in any number of counterparts which taken together will constitute one instrument.

17.13 **Governing Law:** The laws of New South Wales govern this Deed, and the Parties submit to the non-exclusive jurisdiction of the courts in that State.

Executed as a Deed

LAHC

Signed, sealed and delivered for and on behalf of the New South Wales Land and Housing Corporation (ABN 24 960 729 253) by its authorised signatory but not so as to incur personal liability:

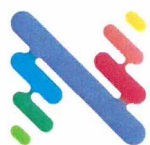
..... Signature of Authorised Signatory Signature of Witness
..... Name of Authorised Signatory Name of Witness
..... Position of Authorised Signatory Address of Witness
 Date

Newcastle City Council

Signed, Sealed and delivered for on and on behalf of Newcastle City Council (ABN 25 242 068 129) by way of delegated authority by:

..... Signature of authorised officer Signature of witness
..... Name of authorised officer Name of witness
..... Date Date

Schedule A – Memorandum of Understanding



**City of
Newcastle**



**NSW Land and Housing
Corporation**

City of Newcastle and NSW Land and Housing Corporation

Collaboration Memorandum of Understanding

3 November 2021

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Preamble

City of Newcastle (CN) and the NSW Land and Housing Corporation (LAHC) are committed to working together to deliver improved outcomes for the residents of the Newcastle Local Government Area (LGA), particularly in relation to the provision of social and affordable housing.

This Memorandum of Understanding (MoU) formalises ideas originated by Councillor Nuatali Nelmes, Lord Mayor of the City of Newcastle, and Melinda Pavey MP, Minister for Water, Property and Housing. Their leadership has led to this new way for the organisations to collaborate, and demonstrates the deep commitment both organisations share to partnering to deliver better outcomes for the community.

CN acknowledges LAHC is self-funded and is required to capture value through the recycling of existing assets.

LAHC acknowledges:

- a) CN is the local consent authority and their support is needed to guide built form outcomes,
- b) CN has a lead role in the implementing the community's vision for the Newcastle LGA, however responsibility for achieving long-term goals rests with all levels of government, businesses, industry groups, community organisations and individuals.

The Minister for Housing and the Lord Mayor have endorsed this Memorandum of Understanding to demonstrate both organisations' commitment to working together to achieve mutually beneficial outcomes.

1. Introduction

The collaboration approach outlined in this MoU establishes the intent of LAHC and CN to work together on housing issues; and specifically to expedite the delivery of new social and affordable housing, including the exploration of a "Make Room Project" in Newcastle, while supporting urban renewal in the Newcastle LGA by renewing older social housing.

The LAHC is a NSW Government public trading enterprise (self-funded) and is responsible for the management of the NSW Social Housing portfolio of approximately 125,000 dwellings. LAHC has recently published a Portfolio Strategy to guide the direction of the NSW social housing portfolio for the next 25 years. LAHC's business model creates a long-term cycle that takes income generated from recycling high-cost and high-value properties that are no longer fit for purpose and reinvests it into building more appropriate social housing that delivers better outcomes for tenants and value for communities. The redevelopment of existing sites is a key component of LAHC's approach to renewing the portfolio.

The LAHC owns 4,317 dwellings across the Newcastle LGA, with an average age of 56 years for houses and 44 years for apartments (as at June 20, 2021). There are 1,179 households on the published waitlist for social housing in the area, and of these 98 have been identified as priority with an urgent need for housing.

CN's Housing Strategy outlines strong demand for general housing into the future, with circa 19,500 dwellings needed to meet demand to 2041, with the need to facilitate more and diverse housing as well as addressing the need for affordable and social housing delivery. Built housing is becoming smaller with over 75% of Newcastle housing approvals being for attached housing. Housing affordability is a key driver.

2. Objectives

LAHC's primary purpose is to deliver more and better social housing, especially for those on the priority wait list and to provide support to its tenants to transition those who can, through the housing system. This needs to be achieved in line with LAHC's self-funding model.

The people LAHC house today are very different to those housed 40 years ago, on which the portfolio is largely based. LAHC needs to reshape and grow its portfolio, to deliver fit-for-purpose high standard housing of a size and design in line with current tenant needs. This is achieved within a self-funded business model leveraging value from within the portfolio. LAHC's key objectives are to:

- a) grow the social housing portfolio,
- b) provide fit for purpose accommodation for those in most need,
- c) reduce the priority wait list,

- d) leverage the value of land and assets to facilitate renewal,
- e) better utilise existing homes so we can house more people, and
- f) reduce the portfolio's 'maintenance heavy' assets.

The Newcastle Housing Strategy and Local Strategic Planning Statement seek to grow housing by some 19,500 homes to 2041. For the growth to be sustainable, it needs to be located in identified growth areas/renewal corridors and deliver housing diversity. The key objectives of the Local Housing Strategy are to:

- g) maintain and encourage housing supply in the right locations,
- h) diversify housing type and tenure across the LGA to provide for a range of housing needs,
- i) increase the availability of accessible and adaptable housing,
- j) increase the supply of affordable rental housing,
- k) ensure new housing and changes to existing housing reflect the desired future local character of the area, and
- l) ensure homes are designed to be ecologically sustainable and to reduce the resource requirements through the life cycle of the dwelling.

3. Priorities

CN will support LAHC's redevelopment program through the provision of an annual payment equivalent to the rates paid by LAHC for its portfolio of properties in the Newcastle LGA for a period of three years.

In turn LAHC will invest the funds in new social housing over the same period in the Newcastle LGA, while also working with CN on the redevelopment of new social housing in the Newcastle LGA.

LAHC notes Community Housing Providers (CHPs) and other charitable organisations are currently exempt from paying rates in accordance with the *Local Government Act 1993* (NSW).

LAHC will establish a team to work on the redevelopment of social housing within the Newcastle LGA, ensuring appropriate time and resources are provided.

The Newcastle Housing Strategy and the Newcastle Area Analysis have many areas of commonality on which to base initial priorities for LAHC and CN. The Newcastle Housing Strategy identifies seven Catalyst Areas within the Newcastle LGA, four of which will provide housing in mixed-use centres:

- a) Newcastle City Centre (additional 4,000 dwellings target),
- b) Broadmeadow (additional 1,500 dwellings target),
- c) Callaghan (additional 750 dwellings target), and

- d) Kotara (additional 400 dwellings target).

These Catalyst Areas and LAHC's existing assets are shown in Appendix A.

CN has recognised the concept of an Affordable Housing Mandate, whereby 15% of new dwellings or floor space on privately developed land is delivered as affordable housing in new housing developments. Opportunities to deliver this housing on LAHC owned land in partnership with community housing providers are to be explored.

LAHC will actively explore the need and merit for increased heights and densities on LAHC land, particularly in areas of social housing concentration. This approach is in line with LAHC's self-funded operating model and can result in mixed tenure communities, which will benefit both social housing and housing supply generally. Prioritising and sequencing these approaches will be collaboratively developed by both parties.

There are 33 refuges and 49 transitional houses within the LGA, providing temporary, safe homes for the most vulnerable members of the community.

LAHC and CN will work together and appropriately consult with other key stakeholders, including LAHC tenants and the broader community, to identify appropriate priorities.

LAHC will consult with CN on the sequencing of work to address these priorities to ensure that resources are effectively utilised.

4. Principles

The shared principles that underpin the collaboration between CN and LAHC include:

- a) Commitment to provide a net increase in social housing across the Newcastle LGA, as well as more, high quality, and accessible social housing;
- b) Expedite the delivery of new and renewed social and affordable housing, including the exploration of a *'Make Room Project'* in the Newcastle LGA; and
- c) Redevelopment opportunities placing community outcomes at the centre of project design – considering and balancing issues such as environmental and social sustainability, public and private amenity, and development of social capital, safety, walkability and efficiency.

It is acknowledged that:

- d) CN has statutory powers and responsibilities for planning processes (planning proposals, development control plans, development applications), and these processes are guided by relevant legislation and policies;
- e) LAHC operates within its own legislation and NSW Treasury requirements for the sale or lease of Government assets; and

- f) LAHC will continue to undertake its Part 5 approvals process for smaller projects that do not require planning proposals or development consent.

Nothing in this collaboration MoU will influence, alter or restrict the exercise of these statutory powers, functions and processes – including those of the elected Council.

5. Collaboration objectives

The purpose of this MoU is to help the participants achieve their respective priorities through the following collaboration objectives:

- a) Promoting information exchange and a pathway to identify solutions to complex planning, property and community service issues;
- b) Identifying matters that require strategic clarification or response; and
- c) Providing an escalation forum to respond to technical development/property issues.

Key areas of collaboration include:

- d) Ongoing identification of priority areas;
- e) Studies, master planning, and planning proposals;
- f) Coordinating and collaborating on communications and stakeholder engagement;
- g) Management of shared spaces; and
- h) Keeping each other informed of relevant activities.

The parties will work collaboratively:

- i) in good faith,
- j) with an objective to be transparent in their dealings with one another,
- k) to provide assistance to each other, where possible, to obtain relevant approvals and to manage stakeholders,
- l) to meet deadlines, and advise in advance if key milestones cannot be met, and
- m) with a view to sharing information and data.

6. Governance structure

A governance structure is proposed to facilitate collaboration. This generally consists of the following:

- a) Oversight Group - Senior level membership responsible for overseeing the relationship under the protocol and resolving critical issues; and
- b) Working Group - Focussing on day to day management and coordination on priorities and working through technical issues.

7. Financial Governance

CN and LAHC will in good faith seek to develop, negotiate and agree to (subject to the parties reaching mutually agreeable terms) a separate funding agreement which will outline the purpose, amount, timing, reporting, and other responsibilities each party will be responsible for in relation to funding between the two parties.

Without pre-empting the funding agreement, nor restricting or limiting the terms to be contained therein, it is anticipated that funding will commence from 1 July 2022.

8. Discontinuation

The parties may discontinue this MoU by mutual agreement with six months' written notice.

The MoU may be ended by way of written notice if LAHC or CN experiences significant change to its structure, charter or responsibilities which result in the commitments and objectives of this MOU not being met. LAHC cannot assign or otherwise transfer its rights or obligations under this MoU.

Discontinuation of this MoU will not prejudice the rights of the parties with respect to any prior breach of this MoU nor affect any obligation or liability of a party arising before termination.

9. Non-Binding

The parties acknowledge and agree that the terms in this MoU are not binding upon CN or LAHC, unless and until such time that the parties execute a legally binding funding agreement to the effect that the obligations in this MoU are now binding upon the parties.

10. Engagement with the elected Council

CN has an obligation to keep the elected Council informed about this MoU and collaboration that occurs under it.

LAHC commits to working with CN to keep elected Councillors appropriately informed about its activities in the LGA, including the following:

- a) General updates on progress with social housing renewal in the LGA;
- b) As part of pre-lodgement engagement on any planning proposals for neighbourhood or major social housing estates;

- c) Notification of proposed land and or property sales at the time of going to market; and
- d) Responding to other matters as requested by Council if appropriate.

It should be noted that LAHC has various obligations under law and probity to maintain commercial and cabinet in confidence information and therefore cannot share this information with the elected Council or CN.

11. Public communications and engagement

Any public communications by the parties in relation to agreed projects should be in their capacity as representatives of their respective organisations and not on behalf of the other organisation.

If there is a need to undertake any shared communications, this should be endorsed by the Chief Executive Officer (CN) and Executive Director, Delivery North (LAHC).

LAHC will share communications and engagement strategies with CN to ensure alignment, leverage networks and coordinate activities where appropriate. CN will make available to LAHC its Engagement Policy and Framework including the Aboriginal Engagement Framework, as a reference to local engagement practice.

12. Conflict of Interest

The Parties agree to notify each other in writing, immediately upon becoming aware of the existence or potential of a conflict of interest and appropriately manage that conflict of interest.

13. Confidentiality

The Parties agree to share information with each other where possible, and only keep information as confidential where required pursuant to statutory roles and functions (e.g. if required as Cabinet in Confidence).

All non-public information and data shared between the parties is to be treated with the strictest confidence, is to be held securely, and is not to be shared with any third party without the express consent of the disclosing party unless required to be shared or disclosed by law.

If a party receives an access application under the *Government Information (Public Access) Act 2009* (NSW) (**GIPA**) requesting access to any shared communication, it will inform and consult with the other party regarding that information prior to disclosure being made pursuant to the GIPA request.

It should be noted that during the early phases of projects, LAHC will be seeking to understand CN's views to determine whether it is feasible to proceed with a project. Accordingly, it is desired to keep these discussions confidential until the parties are aligned, and it is appropriate for broader consultation with other stakeholders and the community to commence.

It will be the responsibility of both organisations and key personnel to use their best endeavours to ensure adherence to confidentiality protocols.

14. Resources

The commitments under this MoU will be built into the core business activities of CN and LAHC.

No additional resources are required to establish or maintain the governance and reporting structures.

Signed for and on behalf of the City of Newcastle

Name: Natali Nelmes

Signature: 

Position: Lord Mayor

Date: 3-11-21

Signed for and on behalf of the New South Wales Land and Housing Corporation

Name: Helinda Fawcett

Signature: 

Position: Minister

Date: 3-11-21

**CCL 24/05/2022 – NSW LAND & HOUSING CORPORATION FUNDING
DEED**

ITEM-41 **Attachment B:** Outline of Memorandum of Understanding (MoU)
& Funding Deed Key Components

City of Newcastle and Land & Housing Corporation
Memorandum of Understanding and Funding Deed

Item	MoU	Funding Deed
Legal Status	Non-binding	Legally binding
Purpose	Establishes partnership and collaboration approach	Outline purpose, amount, timing, reporting and other responsibilities of each party in relation to funding
Objectives	Outlines CN and LAHC's respective objectives	The Project must be in accordance with the MoU (note 1)
Principles	Net increase in social housing Expedite delivery of social and affordable housing Exploration of 'Make Room Project' Redevelopment opportunities	N/A
Priority / Project	CN to support LAHC's redevelopment program for new social housing in the Newcastle LGA	Expedited development by LAHC of a net increase in social and affordable housing in the Newcastle LGA.
Funding	Provision of annual payment equivalent to rates paid by LAHC	Provision of a grant in three tranches as defined in the Funding Deed
Governance	Oversight Group (SteerCo) and Working group	As per MoU
Financial Governance	Separate funding agreement to be developed and agreed	As outlined in funding deed
Commencement	Anticipated that funding will commence 1 July 2022	Upon execution of funding deed
Term	Three years	30 June 2025
Reporting	N/A	LAHC to provide CN with an Annual Report
Status at 11/5/22	Executed 3/11/2021	To be presented to Council on 24/5/22 subject to SteerCo endorsement

Note 1: The MoU outlines LAHC's and CN's objectives, and a number of shared principles that underpin the collaboration between CN and LAHC. Whilst these include references to a range of initiatives, including affordable housing and exploration of a 'Make Room Project' in the Newcastle LGA, the core priority identified in the MoU is for CN to support LAHC's redevelopment program for new social housing in the Newcastle LGA. The Funding Deed provides the legal basis for funding and delivery of this priority, and makes clear definition of the project to be funded, being the 'expedited development by LAHC of a net increase in social and affordable housing in the Newcastle LGA'.

Other initiatives referred to in the MoU (such as a 'Make Room Project') remain important, and can be explored by the Steering Committee, however, are outside the scope of the project to be funded as per the Funding Deed.

These initiatives can also be explored through CN's Affordable Housing Working Party, of which LAHC is a member, and by CN's ongoing advocacy and policy work in this space.